IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6920 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOTIBEN KHODABHAI CHODINGALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6920 of 2004

MR AJ SHASTRI for Petitioner No. 1-5

Mr.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 30/11/2004

ORAL JUDGEMENT

Rule. Mr.Desai, Ld.AGp waives service of rule on behalf of respondents. With the consent of learned

advocates for the parties matter is taken up for final hearing today.

2. The short facts of the case are that the land admeasuring 0 acre 25 gunthas was allotted on 5.7.1973 to Khoda Vira of village Chachar, Taluka Kodinar for growing fruits and trees. Said period of 30 years has expired on 4.7.03. It appears that said Khoda Vira had applied for extension on 10.7.02 and on the basis of the said application when the matter came up for hearing the District Collector as per the impugned order dated 1.9.03 has recorded that said Khoda Vira had remained present on 22.7.03 and after hearing him he found that as only 20 trees are grown in all over the land in question, and therefore, the period of lease is not extended. It is, under these circumstances, the petitioners have approached this court by the present petition.

3. Mr.Shastri for the petitioners by relying upon the death certificate of Khoda Vira, copy whereof is produced at annexure"I" to the petition at page 36, has submitted that Khoda Vira has expired on 8.2.2003 and therefore he could not remain present on 22.7.03 and he further submitted that the legal heirs of deceased Khoda Vira who otherwise could make submissions were not aware about the hearing and consequently they could not make submissions before the Dist.Collector prior to the decision. He, therefore, submitted that the order passed by the Dist.Collector deserves to be interferred with as the same can be said to be in breach of principles of natural justice.

4. Mr.Desai, Ld.AGP is not in a position to dispute the factum regarding the death of Khoda Vira on 8.2.2003 and he is also unable to show any material before this court as to whether the legal heirs of deceased Khoda Vira were heard before the impugned decision was taken by the Dist.Collector or not.

5. Under the above circumstances, as Khoda Vira has expired on the date of hearing and as his legal heirs who are petitioners herein were not heard, the impugned order passed by the Dist.Collector dated 1.9.03 at annexure "H" is quashed on the ground of breach of principles of natural justice with further direction that the District Collector shall give opportunity of hearing to the petitioners herein who are claiming their status as the legal representatives of deceased Khoda Veera and after giving opportunity of hearing the District Collector shall pass appropriate order in accordance with law as early as possible preferably within a period of 2 months

from the date of receipt of writ of this court.

It is clarified that all the contentions of both sides shall remain open.

6. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering facts and circumstances, there shall be no order as to costs. DS permitted.

30.11.2004 (JAYANT PATEL,J)